



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201451062

SEP 26 2014

**Uniform Issue List: 402.03-00**

T. EP. RA. T 3

**Legend:**

Taxpayer =

Plan =

Amount =

Dear ,

This is in response to your submission, dated April 6, 2013, in which you requested a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer represents that in September 2012, he received notice from his former employer of a one-time opportunity to elect to receive from Plan a single lump sum of his accrued benefit, monthly annuity payments beginning December 1, 2012 or if no election was made Taxpayer would receive monthly annuity payments commencing at his 65<sup>th</sup> birthday. Taxpayer had a window between October 3, 2012, and November 1, 2012, to make his decision. This notice did not provide any information with regard to a rollover of his account balance. Taxpayer elected to receive the lump sum distribution and received a distribution of Amount. Taxpayer represents that Amount has not been used for any other purpose.

Taxpayer asserts that his failure to accomplish a rollover within the 60-day period was due to his distraction with the illness and surgery of his wife, and the fact that he did not receive within a reasonable period of time before the date on

which he was required to make an election, the required notice informing him of the option and time frame within which to roll over the distribution or of his ability to make a direct rollover.

Taxpayer received the notice, which was dated October 18, 2012, required under section 402(f) of the Code, explaining the options available to him concerning his accrued benefit. However, Taxpayer's spouse underwent surgery on October 17, 2012. Thus, the notice was available to Taxpayer for only a short time prior to the election date of November 1, 2012, a time during which Taxpayer was preoccupied with the care of his spouse. During the 60-day period following receipt of the distribution, Taxpayer was similarly distracted by his spouse's medical situation. In addition, Taxpayer's spouse was suffering from another chronic medical condition during this period. Taxpayer has submitted documentation from his spouse's physicians documenting her treatment.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount, contained in section 402(c)(3) of the Code.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account ("IRA") constitutes one form of eligible retirement plan.

Section 1.402(c)-2, Q&A 11, of the regulations further states that because the amount withheld as income tax under section 3405(c) of the Code is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld can be contributed as a rollover to an eligible retirement plan within the 60-day period, in addition to the net amount of the eligible rollover distribution actually received by the employee.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 402(f) of the Code provides for a written explanation to recipients of distributions eligible for rollover treatment. Section 402(f)(1) provides, in pertinent part, that the plan administrator of any plan shall, within a reasonable

period of time before making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover was caused by Taxpayer's distraction with his spouse's medical issues, and her required care, during both the 60-day rollover period and the truncated period of time in which to make his benefit election, caused by the failure of Plan to inform Taxpayer, in the manner required by section 402(f) of the Code, of his ability and time frame within which to roll over Amount to an IRA or of his ability to make a direct rollover.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount from Plan. Taxpayer is granted a period of 60 days from the issuance of this ruling letter to contribute Amount into a Rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\*\*\*.. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose